

**MINUTES OF REGULAR PLANNING BOARD MEETING OF MAY 9, 2011**  
**Planning Board's Meeting Room #315, Town Office Building**  
**400 Slocum Road, Dartmouth, MA**

**Planning Board**

Mr. Joseph E. Toomey, Jr., Chairman  
Mr. John P. Haran, Vice Chairman  
Mrs. Lorri-Ann Miller, Clerk  
Mr. John V. Sousa  
Mr. Arthur C. Larrivee

**Planning Staff**

Mr. Donald A. Perry, Planning Director  
Mrs. Joyce J. Couture, Planning Aide

The Chairman called the meeting to order at 7:00 p.m. with three Planning Board members and the Planning Director present. Mr. Haran arrived a few minutes late at 7:12 p.m. and Mr. Larrivee could not attend.

With Mr. Haran being late for the meeting, the Chairman postponed the first item on the agenda to later in the evening.

**Administrative Items**

**(2) Approval of Minutes**

Regular Meeting of April 25, 2011

A motion was made by Mrs. Miller, duly seconded by Mr. Sousa for discussion, and unanimously voted (3-0) to approve the minutes of the regular meeting of April 25, 2011 as written.

Public Hearing of April 25, 2011 "Scenic Tree Removal Request"

A motion was made by Mrs. Miller, duly seconded by Mr. Sousa for discussion, and unanimously voted (3-0) to approve the minutes of the public hearing of April 25, 2011 "Scenic Tree Removal Request" as written.

Public Hearing of April 25, 2011 "Amendment to Sunrise Cove"

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller for discussion, and unanimously voted (3-0) to approve the minutes of the public hearing of April 25, 2011 "Amendment to Sunrise Cove" as written.

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### Public Hearing of April 25, 2011 "Town Meeting Zoning Articles"

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller for discussion, and unanimously voted (3-0) to approve the minutes of the public hearing of April 25, 2011 "Town Meeting Zoning Articles" as written.

### Continued Public Hearing of April 25, 2011 "Town Meeting Zoning Articles"

A motion was made by Mrs. Miller, duly seconded by Mr. Sousa for discussion, and unanimously voted (3-0) to approve the minutes of the continued public hearing of April 25, 2011 "Town Meeting Zoning Articles" as written.

#### **(3) Invoices**

Southcoast Media Group re: legal advertising	dated April 24, 2011	for \$302.00
U. S. Postal Service re: postage stamps	dated May 9, 2011	for \$108.00

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (3-0) to approve payment of the above referenced invoices.

#### **(4) Correspondence**

Legal Notices from City of Fall River  
Legal Notices from Board of Appeals  
Legal Notices from Conservation Commission

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (3-0) to acknowledge and file the above referenced correspondence.

#### **(5) Update on Project Timeline Chart**

The Planning Director mentioned that the Planning Board's Reports with Recommendations to Town Meeting are on this evening's agenda.

A motion was made by Mrs. Miller, duly seconded by Mr. Sousa, and unanimously voted (3-0) to acknowledge and file the update on the project timeline chart.

#### **(6) Endorsement of Definitive Subdivision Plan entitled "The Village at Cedar Dell Woods"**

The Planning Director stated that the plans have been revised in accordance with the certificate of action and the performance covenant is in order. He recommended the Planning Board endorse the plan.

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A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (3-0) to endorse the Definitive Subdivision Plan entitled "The Village at Cedar Dell".

Mr. Haran arrived at this time being 7:12 p.m.

### **(7) Planning Board's Reports with Recommendations on zoning articles for Annual Spring Town Meeting**

Present Deborah Melino-Wender, Director of Development

Discussion commenced on the 1<sup>st</sup> draft report prepared by the Planning Director for the zoning article which would create a new Section 2A – Moratorium bylaw. Displeasure was raised by one Board member with the cost of legal fees the Town continues to incur and questioned why the Town needed to call in Special Counsel. Another Board member questioned why this type of gambling is considered illegal while other forms of gambling such as keno, bingo, and the lottery are legal.

Mr. Perry explained the purpose of the bylaw is to give the Town time to study the issue. Whether another bylaw to regulate video sweepstakes will be proposed remains to be seen, depending on what happens at the Federal and State levels or as decided by the courts.

As a result of tonight's discussion, Mr. Haran asked Ms. Wender to obtain an itemized accounting of the legal fees incurred by the Town in developing this bylaw.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (4-0) to forward the following recommendation on Article 7 to Spring Annual Town Meeting:

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 25, 2011 and closed on April 25, 2011, notice of which was properly published in The Chronicle on April 6, 2011 and April 13, 2011. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article 7 would create a new Section 2A – MORATORIUM ON BUSINESSES PROVIDING ELECTRONIC MACHINES OR DEVICES TO CONDUCT SWEEPSTAKES OR GAMES OF CHANCE. The proposed moratorium would allow the Select Board, Police Department, Planning Board, and Board of Appeals the opportunity to study and propose solutions to minimize the impacts of such businesses which provide electronic machines or deices to conduct sweepstakes or games of chance. This article before Town Meeting merely provides time to determine what measures should be taken to regulate such businesses. Such businesses are so new

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that even the Commonwealth of Massachusetts has had difficulty in determining their legal status and how they should be regulated. If in the next year of the moratorium, definitive answers are provided by the Commonwealth and possibly confirmed by the courts, no action may be necessary by the Town. However, if action is needed, the moratorium will provide the time to determine the appropriate response.

The Planning Board recommends favorably on Article 7.

Next, the Planning Board briefly discussed the recommendation to Town Meeting on the Solar Farm By-Law. Ms. Wender was asked to give the Planning Office a final copy of the article.

A motion was made by Mrs. Miller, duly seconded by Mr. Haran, and unanimously voted (4-0) to forward the following recommendation on Article 8 to Spring Annual Town Meeting:

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 4, 2011, continued to April 25, 2011 and closed on April 25, 2011, notice of which was properly published in The Chronicle on March 16, 2011 and March 23, 2011. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Boards of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article 8 would create a new Section 37 of the Zoning By-Laws entitled "Large Scale Ground-Mounted Solar Photovoltaic Installations" which would provide standards and procedures for developing 250KW or greater solar energy installations throughout the Town. The article is proposed by the Alternate Energy Committee to help address the increased interest in large scale solar installations. The by-law would allow large scale solar installations in all zoning districts in the Town by right, meaning as long as the conditions outlined in the by-law are met, the Director of Inspectional Services could issue a permit. Some of the conditions include setbacks from property lines, vegetated buffers, and the posting of bonds to ensure decommissioning requirements. The development of large scale solar energy installations will help reduce our dependence on fossil fuels and are a source of clean, quiet, sustainable energy.

The Planning Board voted unanimously to recommend favorably on passage of Article 8.

Directly, the Planning Board discussed its recommendation on Article 9 which would change Business zoned land to a Residential zone thereby allowing a residential use at lower density on property which currently has approval under Chapter 40R. Board members strongly expressed that the development agreement approved by the Town be in place prior to Town Meeting or its favorable recommendation will be withdrawn.

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A motion was made by Mr. Haran, duly seconded by Mrs. Miller, and unanimously voted (4-0) to forward the following recommendation on Article 9 to Spring Annual Town Meeting:

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 25, 2011 and closed on April 25, 2011, notice of which was properly published in The Chronicle on April 6, 2011 and April 13, 2011. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article 9 would create a new Section 4C – SINGLE RESIDENCE C DISTRICT and change land currently zoned General Business located south of State Road and bounded by Reed and Beeden Roads (a portion of the former Lincoln Park) into the new Single Residence C District. Minimum lot size in the Single Residence C District would be 6,000 square feet.

The purpose of the proposed zoning is to allow residential use at lower density than the 40R Overlay District. With the conditions of the housing market, the 40R housing types such as high density apartments and/or condominiums are not as viable as a single family home proposal. The Department of Housing and Community Development (DHCD) which is the agency that oversees 40R projects has rejected the proponent's conceptual plan of 57 single family residential units at a density of 6 units per acre. DHCD is committed to the approved multi-family development with a density of 20 units per acre. Therefore, the proponent is asking to change the underlying zoning from Business to Residential. As with the Lincoln Park 40R project, the proponents have proposed a development agreement if the underlying zoning is changed.

The Planning Board recommends favorable action on Article 9 on condition that a development agreement between the developer and the Town is in place addressing all agreed upon obligations.

Lastly, the Planning Board discussed its recommendation to Town Meeting on Article 19 which would allow directional signs in shopping plazas. One Board member voiced an opinion that the Town already has enough signage and felt this would contribute to more sign pollution.

A motion was made by Mr. Haran, duly seconded by Mrs. Miller, and so voted (3-1) with Mr. Sousa opposed, to forward the following recommendation on Article 19 to Spring Annual Town Meeting:

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 4, 2011, continued to April 25, and closed on April 25, 2011, notice of which was properly published in The Chronicle on March 16, 2011 and March 23, 2011. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold;

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and posted in the Town Office Building.

Article 19 would revise Section 11.506 of the General Business District of the Zoning By-Laws by allowing directional signs in excess of the current maximum number of signs, with each sign no larger than 16 square feet in area. The purpose of directional signs would be to provide directions to businesses and roads. Such signs will make it easier for drivers to find their way to businesses located in large shopping plazas and to find their way out of plazas to roads like Route 6 or Interstate 195. This can help manage driver frustration, reduce unnecessary driving and assist lost drivers.

The Planning Board voted (3-1) to recommend favorably on passage of Article 19.

### **(8) Planner's Report**

- Report on engineer's response to Tuesday night Planning Board meetings

Mr. Perry reported that he checked with three local engineers on whether moving Planning Board meetings to Tuesday evenings would affect them. Two engineers stated it would have no effect, and one said it could conflict with Conservation Commission meetings since their meetings are held on Tuesday evenings. One Board member mentioned all Town Board's should be taped for public viewing.

- Planning Staff's report on how Tuesday meetings would affect Planning Staff's operations

Discussion continued. The Planning Director pointed out that fundamentally the current schedule of preparing Board packets works well, and having meetings on Mondays works best for Staff leaving the remainder of the week to finalize actions from the meeting. The Planning Aide mentioned that attendance by Board members has never been an issue and with Special Permits requiring a super majority vote, this could become a potential issue if Board members are unable to attend. Another Board member stated that the Board has met on Monday evenings for years, his personal life has been structured around that schedule, and he said if the meeting night is moved, his attendance will not be as good. With only four Board members present, action on this proposal was postponed until a full Board could be present.

### **(9) For Your Information/New Business**

- Notice from SRPEDD on 2011 Annual Meeting
- Board of Appeals decisions
- Planning staff timesheets

Planning Staff was asked to include the Planning Director's letters of recommendation

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on Board of Appeals applications.

### Executive Session

#### **(1) EXECUTIVE SESSION - M.G.L., Chapter 30A, Section 21A(3) re: South Wharf Subdivision ongoing litigation**

By roll call vote, a motion was made by Mrs. Miller, duly seconded by Mr. Haran, and unanimously voted (4-0), to recess the Planning Board's regular meeting at 8:12 p.m. in order to go into Executive Session pursuant to M.G.L., Chapter 30A, Section 21A(3).

Lorri-Ann Miller – yes, John Sousa – yes, John Haran – yes, Joseph E. Toomey, Jr. – yes.

The regular meeting reconvened at 8:27 p.m.

#### **(10) Discussion of long-range planning projects – Section 16 zoning**

The remainder of the meeting was spent on discussing the revised Section 16 zoning language, particularly a new Waiver of Standards section. The Planning Board generally agreed with a waiver provision and instructed the Planning Director to revise the waiver section as follows:

- There should be different requirements regarding waivers for existing sites and new sites.
- A plan showing compliance with Section 16 should be required before waivers are considered.
- If waivers are granted, mitigation shall be provided which gives equal or greater value.

Mr. Toomey noted that the next Planning Board meeting is scheduled for May 23, 2011, in room #315, Town Office Building, 400 Slocum Road. He then called for a motion to adjourn.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (4-0), to adjourn this evening's regular meeting at 9:35 p.m.

Respectfully submitted,  
Mrs. Joyce J. Couture  
Planning Aide